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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,829

12/29/2004

Gerald Karch

ZAHFRI P711US

5109

20210 7590 02/25/2008  
DAVIS BUJOLD & Daniels, P.L.L.C.  
112 PLEASANT STREET  
CONCORD, NH 03301

EXAMINER

NGUYEN, TAN QUANG

ART UNIT

PAPER NUMBER

3661

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,829	<b>Applicant(s)</b> KARCH ET AL.	
	<b>Examiner</b> TAN Q. NGUYEN	<b>Art Unit</b> 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/29/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAIL ACTION**

### ***Notice to Applicant(s)***

1. This application has been examined. The preliminary amendment filed on December 29, 2004 has been entered. Claim 1 has been deleted. Claim 2 has been added. Thus, claim 2 is pending.
2. The prior art submitted on December 29, 2004 has been considered.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which have been placed of record in the file.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in paragraphs 012 and 013 (hereafter the "admitted art") in view of Wozniak (6,278,925).

7. The "admitted art" discloses a device for evaluating vehicle, driving and operating parameter which makes a selection of gear ratios available as shown in paragraphs 012 and 013. The "admitted art" does not take into consideration among the influence parameters any of the service life. However, Wozaniak suggests an adaptive method onset of positive torque in a powertrain having an automatic transmission which includes the teaching of the gear ratio of the axle and performance variations associated with the service life of the powertrain as shown in at least column 1, lines 27-30. It would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate the teaching of Wozaniak into the system of the "admitted art" in order to take the service life of the powertrain into account in order to make a better selection of the gear ratio.

### ***Conclusion***

8. Claim 2 is rejected.

9. The following references are cited as being of general interest: Drexl (6,040,768), Chene (6,225,892), Genise et al. (6,526,816), and Depping et al. (6,819,987).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Tan Q. Nguyen, whose telephone number is (571) 272-6966. The examiner can normally be reached on Monday-Thursday from 5:30 AM-4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (571) 272-6956.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to the Official Fax Center: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/tqn  
February 17, 2008

**/TAN QUANG NGUYEN/**  
*Primary Examiner*  
*Art Unit 3661*